

ESTTA Tracking number: **ESTTA527170**

Filing date: **03/18/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	THE HEBREW UNIVERSITY OF JERUSALEM		
Entity	NOT-FOR-PROFIT CORPORATION	Citizenship	ISRAEL
Address	GIVAT RAM P.O. BOX 34165 JERUSALEM, 91341 ISRAEL		

Attorney information	EVA J. PULLIAM ARENT FOX LLP 1717 K STREET NW WASHINGTON, DC 20036 UNITED STATES tmdocket@arentfox.com, eva.pulliam@arentfox.com, sarah.bruno@arentfox.com, luna.samman@arentfox.com, cathy.obrien@arentfox.com Phone:202-857-6000
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Applicant Information

Application No	85645276	Publication date	02/19/2013
Opposition Filing Date	03/18/2013	Opposition Period Ends	03/21/2013
Applicant	MyCell Technologies LLC 140 E. Ridgewood Avenue, Suite 125 Paramus, NJ 07652 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary and nutritional supplements containing Omega-3 Fatty Acids; Liquid nutritional supplement, Food supplements, Food supplements for humans and animals, Health food supplements, Vitamin and mineral supplements for use as ingredients in the food and pharmaceutical industry
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Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration	1479104	Application Date	12/04/1986
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No.			
Registration Date	03/01/1988	Foreign Priority Date	NONE
Word Mark	EINSTEIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1986/10/22 First Use In Commerce: 1986/10/22 PROVIDING ACCESS TO AN ON-LINE COMPUTER DATA BASE FOR USE BY HIGH SCHOOL STUDENTS AND TEACHERS		

U.S. Registration No.	3591305	Application Date	07/11/2003
Registration Date	03/17/2009	Foreign Priority Date	NONE
Word Mark	ALBERT EINSTEIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 014. First use: Clocks, watches, non-monetary coins, jewelry, pens and mechanical pencils of precious metal</p> <p>Class 016. First use: Address books, prints, agendas, decals, stickers, appointment books, art paper, art prints, bookmarks, blank journals, pens, pencils, writing instruments, book covers, printed instructional, educational, and teaching materials and paper teaching materials, all in the fields of entertainment, mathematics, science and software; printed invitations, series of fiction books; series of non-fiction books in the field of science, math, physics, and self-help; bumper stickers, calendars, check books, check book covers, pencil cases, wire bound notebooks, crayons, drawing instruments, drawing paper; educational books in the field of entertainment, mathematics, science and software; gift cards, globes, greeting cards, folders, document folders in the form of wallets, three ring binders, writing pads, insect habitats, note paper, paper weights, photograph albums, stationery, photographs, postcards, posters, study guides, trading cards, wrapping paper, paper bags, paper and cardboard cut-out figures for use as wall decorations, life-size standup cardboard cutouts, pen and pencil holders, three dimensional models for educational purposes</p> <p>Class 018. First use: luggage; umbrellas; all purpose sports bags, backpacks, bookbags, handbags, school bags, shoulder bags, wallets, and credit card cases, all made of leather or imitation leather</p> <p>Class 020. First use: Non-metal key chains; busts, figurines, sculptures, ornaments and desktop statuary of bone, plaster, plastic, wax and wood; mirrors, handheld mirrors</p> <p>Class 021. First use: Busts, figurines, sculptures, ornaments and desktop statuary of crystal, china, earthenware, glass, porcelain and terra cotta; mugs, cups, containers for household or kitchen use, cookie jars, dinnerware, flower pots, glass beverage ware, non-metal decorative boxes, salt and pepper shakers, vases</p> <p>Class 025. First use: Clothing, namely, t-shirts, sweatshirts, shorts, pants, shirts, dresses, suits, socks, footwear, headwear, pants, bandanas, neckwear, coats, jackets,</p>		

	beachwear, undergarments Class 028. First use: Games, playthings and toys, namely, action figures, bobble head dolls, card games, board games, action skill games, arcade games, baby multiple activity toys, bathtub toys, bubble making wand and solution sets, pet toys, chess sets, children's multiple activity toys; educational products in the nature of learning toys and games, namely, multiple activity toys for children and babies, action figures, and puzzles; athletic sporting goods, namely, athletic wrist and joint supports; Christmas tree decorations, costume masks, crib mobiles, electronic educational game machines for children, exercise equipment, namely, manually operated jogging machines, powered treadmills, stair-stepping machines, rowing machines, abdominal boards, stationary cycles, equipment for chest pulls, weight lifting machines, exercise platforms, exercise tables, trampolines, treadmills, weight cuffs, weights, wrist weights, weight lifting benches and accessories therefor, exercising pulleys, aerobic step machines, aerobic steps, weight lifting gloves, yoga mats, ankle and wrist weights; flying discs, golf clubs, infant development toys, infant toys, kaleidoscopes, kites, magic tricks, marbles, mechanical toys, musical toys, party games, party favors in the nature of small toys, play figures, playing cards, puppets, puzzles, sand toys, skateboards, snow globes, stuffed toys, sport balls, toy models, namely, toy model cars, toy butterfly nets, toy rockets, toy vehicles, toy watches, toy model hobby craft kits, water squirting toys, wind socks, wind-up toys, yo-yos
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U.S. Application No.	78273219	Application Date	07/11/2003
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EINSTEIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: Computer software, for use in the field of database management, marketing and website design; computer hardware and peripherals, mouse pads; computer games, namely computer game software on cartridges and discs and downloadable via a global computer network; interactive video game programs, video game software, cartridges and discs and downloadable via a global computer network; prerecorded audio and video tapes and discs featuring music and recorded books in the fields of math, science, reading and test preparation at the primary and secondary level; audio tape recorders and players; video tape recorders and players; calculators; decorative magnets; eyeglasses; sunglasses; eyeglass frames; laboratory equipment, namely thermometers, flasks, Petri dishes, test tubes, microscopes and microscope slides sold as a kit; magnifying glasses; metal detectors; personal digital assistants; radios; telephones; telescopes; electronic testers for testing voltage, light, sounds, pH and temperature; cameras Class 014. First use: Clocks, watches, non-monetary coins, jewelry Class 016. First use: Address books, prints, agendas, decals, stickers, appointment books, art paper, art prints, bookmarks, blank journals, pens, pencils, writing instruments, book covers, printed instructional, educational, and teaching materials in the fields of math, science, reading and test preparation at the primary and secondary level, printed invitations, books in the fields of math, science, reading and test preparation at the primary and secondary level, bumper stickers, calendars, check books, check book covers, pencil cases, spiral-bound notebooks,		

	<p>crayons, drawing instruments, drawing paper, educational books in the fields of math, science, reading and test preparation at the primary and secondary level, gift cards, globes, greeting cards, folders, three ring binders, writing pads, insect habitats, note paper, paper weights, photograph albums, stationery, photographs, postcards, posters, study guides, trading cards, wrapping paper, paper bags, paper and cardboard cut-out figures for use as wall decorations, life-size standup cardboard cutouts, pen and pencil holders, three dimensional models for educational purposes</p> <p>Class 018. First use:</p> <p>All purpose sports bags, backpacks, bookbags, handbags, luggage, school bags, shoulder bags, umbrellas, wallets, credit card cases</p> <p>Class 020. First use:</p> <p>Non-metal key chains; busts, figurines, sculptures, ornaments and desktop statuary of bone, plaster, plastic, wax and wood; mirrors, handheld mirrors</p> <p>Class 021. First use:</p> <p>Busts, figurines, sculptures, ornaments and desktop statuary of crystal, china, earthenware, glass, porcelain and terra cotta; mugs, cups, containers for household or kitchen use, cookie jars, dinnerware, flower pots, glass beverageware, non-metal decorative boxes, salt and pepper shakers, vases</p> <p>Class 025. First use:</p> <p>Clothing, namely, t-shirts, sweatshirts, shorts, pants, shirts, dresses, suits, socks, footwear, headwear, bandanas, neckwear, coats, jackets, beachwear, undergarments</p> <p>Class 028. First use:</p> <p>Games and playthings, namely, action figures, bobble head dolls, card games, board games, action skill games, arcade games, bubble making wand and solution sets, pet toys, chess sets, Christmas tree decorations, costume masks, electronic educational game machines for children, kaleidoscopes, kites, magic tricks, marbles, mechanical toys, musical toys, party games, party favors in the nature of small toys, play figures, playing cards, puppets, puzzles, sand toys, skateboards, snow globes, stuffed toys, toy butterfly nets, toy rockets, toy vehicles, toy watches, toy model hobbycraft kits, water squirting toys, wind socks for decorative purposes, wind-up toys, yo-yos, sporting articles, namely, flying discs, golf clubs, sport balls</p> <p>Class 041. First use:</p> <p>Educational services, namely, providing classroom instruction and educational demonstrations in the fields of math, science, reading, and test preparation at the primary and secondary level, excluding educational services in the field of medicine or biological science at the graduate and professional level</p>
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Attachments	HUJ - Notice of Opposition LIQUID EINSTEIN.pdf (7 pages)(96958 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/EVA J. PULLIAM/
Name	EVA J. PULLIAM
Date	03/18/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application No. 85/645,276 for the mark LIQUID EINSTEIN, filed June 6, 2012, and published February 19, 2013

THE HEBREW UNIVERSITY OF JERUSALEM

Opposer,

v.

MYCELL TECHNOLOGIES LLC

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

The Hebrew University of Jerusalem (“Opposer”), is a not-for-profit corporation organized and existing under the laws of Israel, with an address at Givat Ram, P.O. Box 34165, Jerusalem 91341, Israel, and believes that it is or will be damaged by the issuance to registration of LIQUID EINSTEIN, Application No. 85/645,276 (“Applicant’s Mark”) and hereby opposes registration of Applicant’s Mark under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. § 1063.

As grounds for opposition, Opposer alleges the following:

1. Opposer is the owner of all right, title and interest in, to and of the late, famous scientist and genius, Albert Einstein, including the publicity rights in his name and likeness, service marks and trademarks.

2. The name and mark EINSTEIN has been used by those licensed or otherwise authorized by Opposer on or in connection with a broad variety of goods and services prior to Applicant’s filing date, including but not limited to food products, coffee, tea, bakery products, beverages, bottled water, candy, tee-shirts, hats, mugs, and posters, as well as computers,

software applications, video games, educational CD-ROMS with books sold as a unit, providing access to an on-line computer data base to students, and more.

3. Opposer owns numerous EINSTEIN marks, including, *inter alia*, incontestable U.S. Registration No. 1,479,104 for EINSTEIN in connection with services in International Class 42; U.S. Registration No. 3,591,305 for ALBERT EINSTEIN in connection with goods in International Classes 14, 16, 18, 20, 21, 25 and 28; as well as pending U.S. Serial No. 78/273,219 for EINSTEIN in connection with goods and services in International Classes 9, 14, 16, 18, 20, 21, 25, 28, and 41; and others (hereinafter collectively referred to as “EINSTEIN Marks”). Opposer’s exclusive right to use the EINSTEIN Marks is evidenced by these applications and registrations. Further, the referenced registrations are valid, subsisting and provide prima facie evidence of Opposer’s exclusive right to use the marks in commerce on its own and through its authorized licensees.

4. Applicant has applied to register Applicant’s Mark in connection with food products. Applicant’s Mark contains, and is confusingly similar to the EINSTEIN Marks and the applied-for goods are related to goods and services of Opposer and/or its licensees, or to goods and services into which Opposer intends to expand, or in connection with which consumers will believe Opposer has expanded. In particular, the EINSTEIN Marks cover printed materials such as books, as well as educational goods and services.

5. Applicant’s Mark is similar to the EINSTEIN Marks and Applicant’s incorporation of the name “EINSTEIN” is likely to conjure up an association with Dr. Albert Einstein, who is well known as the preeminent genius of the twentieth century.

6. Due to the enormous and longstanding fame of the late scientist and genius named Dr. Albert Einstein and Opposer’s ownership and use of the name and mark EINSTEIN in

connection with a broad variety of goods and services, including food products, Applicant's Mark falsely suggests a connection with, affiliation with, association or sponsorship by Opposer.

7. Upon information and belief, Applicant is well aware of and seeks to foster that false connection with the late, well known scientist and genius, Dr. Albert Einstein.

8. Since prior to Applicant's filing date, the name and mark EINSTEIN has become associated with Opposer, such that should Applicant begin to use Applicant's Mark in connection with the applied-for goods, the consuming public will likely be confused to believe that Applicant's goods are authorized, sponsored, licensed or controlled by Opposer, or are in some way related to Opposer.

9. Since long prior to the filing date of Applicant's application, Opposer and its licensees have used the EINSTEIN Marks in connection with the sale and advertising of its goods and/or services, including food products.

10. Opposer and its licensees have used and advertised the EINSTEIN Marks over a period of many years and, thus, these marks have become well known and famous among prospective purchasers as distinctive indicators of the origin of Opposer's goods and services.

11. Notwithstanding Opposer's prior established rights in the EINSTEIN Marks, Applicant, MyCell Technologies LLC, a corporation with an address of 140 E. Ridgewood Avenue, Suite 125, Paramus, New Jersey 07652, filed Application No. 85/645,276, LIQUID EINSTEIN, for "[d]ietary and nutritional supplements containing Omega-3 Fatty Acids; [l]iquid nutritional supplement, [f]ood supplements, [f]ood supplements for humans and animals, [h]ealth food supplements, [v]itamin and mineral supplements for use as ingredients in the food and pharmaceutical industry" in International Class 5.

LIKELIHOOD OF CONFUSION - §2(d)

12. Paragraphs 1 through 11 above are incorporated by reference as part of this Count.

13. The mark which Applicant seeks to register is identical to or so closely resembles the EINSTEIN Marks that the use and registration thereof is likely to cause confusion, mistake and/or deception as to the source or origin of Applicant's goods in violation of Section 2(d) of the Trademark Act, and will injure and damage Opposer and the goodwill and reputation symbolized by the EINSTEIN Marks.

14. Applicant's goods are so closely related to Opposer's goods and services that the public is likely to be confused, or deceived, or to assume erroneously that Applicant's goods are those of Opposer or that Applicant is in some way connected with, sponsored by or affiliated with Opposer, all to Opposer's irreparable damage. Specifically, Applicant's Mark is allegedly used in connection with goods in Class 5, where this is a category of goods that consumers are likely to associate with Opposer and/or Opposer's licensees.

15. Likelihood of confusion is enhanced by the fact that Applicant's Mark and the EINSTEIN Marks all contain the name "EINSTEIN," which is the dominant portion of the marks, thus consumers will assume that goods offered under Applicant's Mark originate with or are sponsored by Opposer.

16. Applicant is not affiliated or connected with or sponsored by Opposer, nor has Opposer approved of the goods offered by Applicant in connection with the applied-for mark, nor has Opposer granted Applicant permission to use the applied-for mark.

DECEPTION/FALSE SUGGESTION OF CONNECTION - § 2(a)

17. Paragraphs 1 through 16 above are incorporated by reference as part of this Count.

18. Applicant's Mark is identical to or so closely resembles the EINSTEIN Marks that Applicant's Mark is likely to cause deception in violation of Section 2(a) of the Trademark Act in that the mark misdescribes the nature or origin of the goods, purchasers are likely to believe

that the misdescription actually describes the nature or origin of the goods, and this is likely to materially alter purchasers' decisions to acquire Applicant's goods.

19. Applicant's Mark is identical to or so closely resembles the EINSTEIN Marks that it falsely suggests a connection with Opposer and implies an association with Dr. Albert Einstein in violation of Section 2(a) of the Trademark Act, because Applicant's Mark points uniquely to Opposer. Therefore, purchasers will likely assume that goods offered under Applicant's Mark are connected with Opposer.

20. The dominant part of Applicant's Mark is "EINSTEIN," thus Applicant's Mark is clearly drawing a connection between the goods listed in the application and the genius of Dr. Albert Einstein.

21. When Applicant's Mark is used in connection with the goods described in its application, said mark will cause purchasers to mistakenly assume that Opposer is endorsing, attempting to promote, or encouraging the sale of Applicant's goods by permitting Applicant's Mark to be used in connection with such goods.

22. Applicant's Mark is deceptive in that it falsely suggests a connection with or approval by Opposer, all to Opposer's irreparable damage.

DILUTION - § 43(c)

23. Paragraphs 1 through 22 above are incorporated by reference as part of this Count.

24. For many years, many of the EINSTEIN Marks have been widely used and extensively advertised in the United States and, therefore, the EINSTEIN Marks have become well known and famous as distinctive symbols of Opposer's goodwill.

25. The EINSTEIN Marks became well known and famous before Applicant applied for registration of Applicant's Mark.

26. Applicant's Mark will cause dilution of the distinctive quality of Opposer's famous EINSTEIN Marks.

27. Use and registration of Applicant's Mark will lessen the capacity of Opposer's famous EINSTEIN Marks to identify and distinguish Opposer's goods.

28. Use and registration of Applicant's Mark will tarnish the goodwill symbolized by Opposer's famous EINSTEIN Marks.

29. Likelihood of dilution and damage to Opposer's goodwill is enhanced by the fact that Opposer will have no control over the nature and quality of the goods offered under Applicant's Mark; and prospective customers who encounter defects in the quality of Applicant's goods will attribute those defects to Opposer, which will tarnish Opposer's goodwill.

30. Use and registration of Applicant's Mark will cause dilution by blurring, thus diluting or weakening the unique and distinctive significance of Opposer's famous EINSTEIN Marks to identify and distinguish one source.

31. By reason of all of the foregoing, Opposer will be damaged by the registration of Applicant's Mark and registration should be refused.

WHEREFORE, Opposer respectfully requests that Application No. 85/645,276 be refused registration.

Dated: March 18, 2013

Respectfully submitted,
ARENT FOX LLP



Anthony V. Lupo

Sarah L. Bruno

Eva J. Pulliam

Attorneys for Opposer

Arent Fox LLP

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 28 U.S.C. § 1746, that on this 18th day of March, 2013, I caused the foregoing NOTICE OF OPPOSITION to be served electronically, by facsimile, and/or first-class mail upon the following:

SAM NGUYEN
HAMILTON, DESANCTIS & CHA, LLP
3239 EL CAMINO REAL STE 220
PALO ALTO, CALIFORNIA 94306-2247
UNITED STATES



Eva J. Pulliam